In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 369

AMERICAN FARM LINES, APPELLANT

v.

BLACK BALL FREIGHT SERVICE, ET AL.

No. 382

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

BLACK BALL FREIGHT SERVICE, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

MEMORANDUM FOR THE UNITED STATES

These are appeals from a final order of a three-judge court setting aside successive orders of the Interstate Commerce Commission granting the application of American Farm Lines for temporary authority to provide certain motor service for the Department of Defense. American Farm Lines is the appellant in No. 369; the Commission is the appellant in No. 382. The United States supported the Com-

mission in the court below, but did not appeal and accordingly is an appellee in each case in this Court.

Although the United States has not considered the issues involved in these cases of sufficient importance to warrant its seeking plenary consideration by this Court, it agrees that the decision of the court below is erroneous and will support the Commission's position if probable jurisdiction is noted and the cases are set for argument. Specifically, we agree with the Commission that the record justified the grant of temporary authority and that there was reasonable compliance with the applicable Commission rules. *Estes Express Lines* v. *United States,* 292 F. Supp. 842 (E.D. Va.), affirmed, 394 U.S. 718. We further agree that the Commission had jurisdiction to supplement the administrative record notwithstanding the commencement of the judicial review proceeding; the Commission's further action was not inconsistent with the jurisdiction of the district court and caused no prejudice to any party. *Inland Steel Co.* v. *United States,* 306 U.S. 153, 159–160; *Anchor Line Ltd.* v. *Federal Maritime Commission,* 299 F. 2d 124 (C.A.D.C.), certiorari denied, 370 U.S. 922.

For the foregoing reasons, the United States does not oppose the appellants' requests that probable jurisdiction be noted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1969.

360-586—69

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